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SUPREME COURT OF THE ~~UNITED STATES~~

OCTOBER TERM, 1949

No. 456

THE INTERNATIONAL UNION OF UNITED AUTOMOBILE, AIRCRAFT AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, C.I.O., ET AL.,
Appellants,

vs.

GERALD K. O'BRIEN, WAYNE COUNTY PROSECUTING ATTORNEY AND STEPHEN J. ROTH, ATTORNEY GENERAL OF THE STATE OF MICHIGAN,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR APPELLANTS

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INDEX

	Page
Opinions Below	1
Jurisdiction	2
Statutes Involved	2
Questions Presented	4
Statement	4
Specification of Errors to be Urged	9
Summary of Argument	9
Argument:	
I. The Michigan Statute Invades a Field which Congress has occupied	14
A. Congress enacted specific provisions dealing with strikes in industries affecting commerce	16
B. Congress expressly rejected the strike vote provision which Michigan has enacted	20
C. The International Union case does not support the decision below	26
II. The Michigan Statute Conflicts with the National Act	27
A. The Bargaining Unit under the Michigan Statute is different from that under the National Act	28
B. The delays imposed by the Michigan Statute conflict with the National Act	32
C. The Michigan statute conflicts with the right to strike guaranteed by the National Act	33
D. The International Union case is inapplicable	37
III. The Michigan Statute Violates the Due Process Clause of the Fourteenth Amendment	38
Conclusion	52
Appendix A	53
Appendix B	56

CITATIONS

Cases:

	Page
Alabama Federation of Labor v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810 (1944)	14, 49
Algoma Plywood & Veneer Co. v. *Wisconsin Employment Relations Board*, 336 U. S. 301	15
Allen-Bradley, Local No. 1111 v. *Wisconsin Employment Relations Board*, 315 U. S. 740	15, 31, 50
American Federation of Labor et al. v. *American Sash & Door Co.*, 335 U. S. 538, 559	51
American Federation v. *Bain et al.*, 165 Ore. 183, 106 P. (2d) 544 (1940)	14, 49
American Manufacturing Co., 5 NLRB 443, enforced, 106 F. 2d 61 (CCA 2d), affirmed, 309 U. S. 629	34
American Steel Foundries v. *Tri-City Central Trades Council*, 257 U. S. 184, 209	39
Arthur v. *Oakes*, 63 Fed. 310, 319 (CCA 7th, 1894)	45
Bayonne Textile Corp. v. *American Federation of Silk Workers*, 116 N. J. Eq. 146, 152-153, 172 Atl. 551, 554 (1934)	40
Bethlehem Steel Co. v. *New York State Labor Relations Board*, 330 U. S. 767	10, 12, 20, 30, 33
Cantwell v. *Connecticut*, 310 U. S. 296, 311	41
Carey v. *Donahue*, 240 U. S. 430, 436-437	25
J. I. Case Co. v. *National Labor Relations Board*, 321 U. S. 332	27, 29, 48
Matter of Chrysler Corp., 42 N.L.R.B. 1145	29
Cloverleaf Butter Co. v. *Patterson*, 315 U. S. 148, 155-156	31
Columbia Pictures Corp., 64 NLRB 490, 514-515	34
De Jonge v. *Oregon*, 299 U. S. 353, 364-365	41
Dorchy v. *Kansas*, 272 U. S. 306	50
Gibonéy et al. v. *Empire Storage & Ice Co.*, 336 U. S. 490	50
Graham v. *Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. 232	29
Hill v. *Florida*, 325 U. S. 538	10, 13, 20, 28, 33, 36, 37
Hotel and Restaurant Employees International Alliance, etc. v. *Wisconsin Employment Relations Board*, 236 Wis. 329, 345, 294 N. W. 632; affirmed 315 U. S. 437	45, 50

Page

International Union, U.A.W.A., A. F. of L., Local 232 v. Wisconsin Employment Relations Board, 336 U. S. 245 8, 11, 15, 26, 31, 37, 50, 51

Iron Moulders' Union v. Allis Chalmers Co., 166 Fed. 45, 50 (C.C.A. 7, 1908) 40

LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board, 336 U. S. 18 10, 12, 26, 30, 31, 33

Lovell v. Griffin, 303 U. S. 444, 451 41

Murdock v. Pennsylvania, 319 U. S. 105 43

Napier v. Atlantic Coast Line R. Co., 272 U. S. 605 15

National Labor Relations Board v. Fansteel Metallurgical Corporation, 306 U. S. 240, 256 27, 34, 40

National Labor Relations Board v. Jones & Laughlin Steel Corporation, 301 U. S. 1, 33 40

National Labor Relations Board v. Kalamazoo Stationery Co., 160 F. (2d) 465, 471; cert. den. 332 U. S. 762 33, 34

National Labor Relations Board v. Mackay Radio & Telegraph Co., 304 U. S. 333, 345-347 34

Norwegian Nitrogen Prod. Co. v. United States, 288 U. S. 294, 306 25

Pennsylvania R. Co. v. Public Service Commission, 250 U. S. 566, 569 25

People of State of California v. Zook, 336 U. S. 725, 732, 734 15

Plankinton Packing Co. v. Wisconsin Employment Relations Board, No. 419, October Term, 1949, decided Feb. 13, 1950 10, 19, 33

Pollock v. Williams, 322 U. S. 4, 17-18 40, 45, 46, 50, 51

In re Porterfield, 28 Cal. (2d) 91, 114-118, 168 P. (2d) 706, 720-722 (1946) 40

Republic Steel Corporation, 62 N.L.R.B. 1008 34

Schneider v. State of New Jersey, 308 U. S. 147, 161 41

Southern S. S. Co. v. National Labor Relations Board, 316 U. S. 31 27

Stapleton v. Mitchell, 60 F. Supp. 51 (D. Kans. 1945) 14, 48, 49

Steele v. Louisville & Nashville R. R. Co., 323 U. S. 192 29

	Page
Texas & N.O.R. Co. v. Brotherhood of Ry. & S.S. Clerks, 281 U. S. 548, 570-571	39, 40
Thomas v. Collins, 323 U. S. 516, 530	41, 46
Thornhill v. Alabama, 310 U. S. 86, 88, 103, 105	41, 42
United Aircraft Mfg. Co., 1 NLRB 236, 252	34
United States v. Carolene Products Co., 304 U. S. 144, 152-153	40
United States v. Great Northern Ry. Co., 287 U. S. 144, 154-155	25
United States v. Pfitsch, 256 U. S. 547, 550-552	25
Wolff Packing Co. v. Court of Industrial Relations, 262 U. S. 522, 534; 267 U. S. 552, 569	40, 46

Statutes:

Act 21, Public Acts of Michigan, 1947	44
Act No. 176, Public Acts of Michigan, 1939, as amended by Act No. 318, 1947:	
Sec. 2(b)	41
Sec. 9	2, 3, 5, 6, 32, 38, 45
Sec. 9(a)	2, 3, 5, 6, 32, 38, 45
Sec. 9(b)	2, 3, 5, 6, 38, 44
Sec. 9(c)	2, 3
Sec. 22	2, 3, 38, 44
Sec. 22(a)	44
Act No. 230, Public Acts of Michigan, 1949	3
Labor Management Relations Act, 1947, 61 Stat. 136, 29 U.S.C., Supp. II, 141-197:	
Sec. 1(b)	14, 27
Sec. 7	13, 27, 33, 34, 35
Sec. 8(b)	10, 17, 18, 47
Sec. 8(d)	7, 10, 12, 15, 18, 32, 33
Sec. 13	13, 34, 35
Sec. 14(b)	15, 20
Sec. 209(b)	10

Page

Sec. 210 10, 18
Sec. 303 10, 18

Section 1257 (2), Title 28, United States Code 2

Miscellaneous:

93 Cong. Rec. 3445, 3448, 3835 21, 36
Hartley Bill, H.R. 3020, 80th Cong., 1st Sess. 11, 20, 21, 24
Hearings before the Committee on Labor and Public Welfare, U. S. Senate, 80th Cong., 1st Sess. on S. 55 and S.J. Res. 22 16, 22
Hearings before the Committee on Education and Labor, House of Representatives, 80th Cong., 1st Sess. on Bills to Amend and Repeal the National Labor Relations Act 16
House Report No. 245 on H.R. 3020 20, 21, 25, 26
Senate Report No. 105 on S. 1126 17, 19, 24, 35
Legislative History of the National Labor Relations Act of 1935, Vol. I, pp. 153, 246, 1312, 1344, 1346, 1371 34
Twentieth Century Fund (1947): *Strikes and Democratic Government* 39

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF MICHIGAN

BRIEF FOR APPELLANTS

Opinions Below

The opinion of the Circuit Court of Wayne County, Michigan, which is not reported, may be found at pages 66 to 69 of the record. The opinion of the Supreme Court of Michigan is reported in 325 Mich. 250, 38 N. W. (2d) 421 (1949) and may be found at pages 121 to 134 of the record.

Jurisdiction

The judgment of the Supreme Court of Michigan was entered on June 29, 1949 (R. 135). The order of Mr. Chief Justice Vinson allowing this appeal was entered on September 26, 1949 (R. 135-136). The order of this Court noting probable jurisdiction was entered on December 12, 1949 (R. 139). The jurisdiction of this Court is invoked under Section 1257(2) of Title 28, U.S.C.

Statutes Involved

The statute of the State of Michigan which is involved in this appeal is Act No. 318, Public Acts of Michigan, 1947, commonly known as the Bonine-Tripp Act.[1] Sections 9, 9a, 9b, 9c and 22 of this Act, which are particularly relevant to this appeal, are set forth in full in Appendix A to this brief. For the convenience of the Court a summary of these sections is presented here.

Section 9 of the Michigan statute provides that "no strike or lockout shall take place or be put into effect" until specified "steps" and "requirements" are complied with:

(a) If the parties cannot settle their dispute, "the employees or their representative, in the case of impending strike" must notify the State Mediation Board of the issues involved "not less than ten days before the strike . . . is to become effective . . ." Section 9(1). Mediation is then to proceed. Section 9(2).

(b) If it becomes apparent to the State Mediation Board, or if the Board is notified by either party that "further efforts to settle such dispute by mediation would be without avail," the Board is to conduct an election within 10 days,

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[1] Act No. 176, Public Acts 1939, as amended; Michigan Statutes Annotated, 1947, Cum. Supp., §§ 17.454(1) *et seq.* The Michigan statute under review was approved July 1, 1947, effective October 11, 1947.

or, if this is not practical, within 20 days. The expenses of such election are to be defrayed by the parties to the dispute. Section 9a.

(c) "Every employee in the bargaining unit"—the State Mediation Board is required by Section 9e to "determine" the "bargaining unit"—"shall be entitled to vote in such election and in order to authorize a strike under the provisions of this statute, a majority of all employees in such bargaining unit must vote [by secret ballot] in favor of such action." Section 9a.[2]

(d) Section 9b provides that "it shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by Section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a."

Section 22 makes violations of the act criminal offenses. It provides that "any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect . . . without first having served notice as required in section 9 of this act . . . or while an election is pending under said section 9

[2] The provisions with respect to the expenses of the election, and the composition of the majority who must approve the strike were changed by amendments to the Michigan Act in 1949 (Act No. 230, Public Acts of 1949, approved May 31, 1949). The State now bears the expenses of the election. A "majority of all employees casting valid ballots", rather than a majority of the bargaining unit, must vote in favor of strike action. However, under Michigan law the change in the statute does not release plaintiffs from liability for the penalties incurred by their action under the earlier statute. The earlier statute is "treated as still remaining in force" for the purpose of prosecution for any violations committed while it was in effect. Mich. Stats. Ann., Ch. 5, Sec. 2.214.

. . ." shall be punished by fine up to $1,000.00 or imprisoned for not more than six months, or by both.

The relevant sections of the Labor-Management Relations Act, 1947 (61 Stat. 136; 29 U. S. C. §§ 141-197) are set forth in Appendix B.

Questions Presented

1. Whether the provisions of the Michigan statute prohibiting the calling of a strike for higher wages in an industry affecting commerce unless and until a majority of all employees in the collective bargaining unit as designated by the State Mediation Board have so voted in a state-conducted election invades the field which Congress has occupied by the Labor-Management Relations Act, 1947.

2. Whether these provisions of the Michigan statute conflict with the provisions of the Labor-Management Relations Act, 1947.

3. Whether these and other provisions of the Michigan statute constitute unlawful restraints upon basic personal rights in violation of the due process clause of the Fourteenth Amendment.

Statement

The amended complaint (R. 39-46) was filed in the Circuit Court of Wayne County, Michigan, on May 29, 1948, by the International Union of United Automobile, Aircraft and Agricultural Implement Workers of America, C.I.O. (hereinafter referred to as the UAW-CIO), the Acting President of the UAW-CIO in his own behalf and in behalf of 1776 members of the Union employed by the Chrysler Corporation, and certain other officers and members of the UAW-CIO. The defendants were James N. McNally, the Wayne

County Prosecuting Attorney, and Eugene F. Black, the Michigan Attorney General.[3]

The complaint alleges that the Chrysler Corporation operates 10 plants in Michigan, 3 in Indiana and 1 in California (R. 39, 42); that the UAW-CIO, which has been certified by the National Labor Relations Board as the collective bargaining representative of all production and maintenance employees in the 14 Chrysler plants, has entered into a collective bargaining contract with the company on behalf of all these employees (R. 42); that a wage dispute arose between the plaintiffs and the corporation (R. 41); that the UAW-CIO, having fully complied with the notice, bargaining and mediation requirements of Section 8(d) of the Labor-Management Relations Act, 1947, decided to strike in support of its wage demands (R. 42-43); that the State Mediation Board demanded that the plaintiffs and members of the Union who were employees of the Chrysler Corporation submit to an election (R. 41); that a strike was called "while said election was pending within the meaning" of the Act (R. 41-42); and that defendants threatened to prosecute all persons instigating or causing a strike prior to authorization by an election (R. 43).

The complaint further alleges that sections 9, 9a and 9b, as threatened to be applied to the plaintiffs, are unconstitutional and void as in conflict with the Labor-Management Relations Act, 1947, and the due process clause of the

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[3] In January, 1949, in consequence of the 1948 elections, Gerald K. O'Brien succeeded James N. McNally as Prosecuting Attorney of Wayne County, and Stephen J. Roth succeeded Eugene F. Black as Attorney General of Michigan. This succession occurred prior to the consideration of the cause by the Supreme Court of Michigan, which rendered its decision June 29, 1949. A formal order of substitution was entered by the Michigan Supreme Court on September 21, 1949.

Fourteenth Amendment (R. 43-44).[4] Plaintiffs asked that the strike vote requirements of sections 9, 9a, and 9b be determined to be invalid and, to prevent irreparable injury, prayed for an injunction to enjoin prosecution (R. 45).

A motion to dismiss (R. 48-49) for lack of jurisdiction was denied by the Circuit Court (R. 50-51). A temporary injunction was granted restraining and enjoining defendants "from instituting and proceeding further in any prosecution involving alleged violations of the election requirements . . ." (R. 52).

The defendant Prosecuting Attorney admitted in his answer that "he will prosecute all persons who in said county violate the penal provisions of Act No. 318 of the Michigan Public Acts, 1947" (R. 60). Likewise the defendant Attorney General admitted that he and the Prosecuting Attorney "have threatened to enforce the penal provisions of the statutes and laws of this State against violators of said statutes and laws" (R. 57) and that "if said plaintiffs or others violate the laws of the State of Michigan they will be subjected to prosecution" (R. 58). Both defendants denied the allegations as to unconstitutionality (R. 57, 60).

The case was tried to the Circuit Court without a jury on July 15, 1948 (R. 2-39). Evidence was presented that the UAW-CIO was the recognized bargaining representative of all the employees of the Chrysler Corporation (R. 13-14); that the collective bargaining unit certified by the National Labor Relations Board and the collective bargaining agreement between the UAW-CIO and the corporation covered 4 plants in Indiana and California as well as 10 in Michigan (R. 14; 85-86); that the company's activities

[4] Various allegations under the Michigan Constitution need not be repeated here since they have been finally determined against plaintiffs by the Supreme Court of Michigan.

affected interstate commerce (R. 14); and that plaintiffs had complied with the notice, bargaining and mediation requirements of Section 8(d) of the Labor-Management Relations Act, 1947 (R. 9, 21).

The Acting President of the UAW-CIO testified that "the fundamental object of the Chrysler strike is to reach a satisfactory wage agreement with the Chrysler Corporation for our membership. We were unable to reach this agreement in peaceful collective bargaining sessions, and therefore we had to call a strike in order to force what we considered justified demands" (R. 13). The Acting President of the UAW-CIO further testified that there had been compliance with the requirements of the UAW-CIO Constitution in calling the strike (R. 11-12) as well as with the requirements of federal law (R. 21). On May 11, 1948, the day before the strike, the UAW-CIO received the following telegram from the State Mediation Board:

> "You are hereby advised that any work stoppage at Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended."
>
> Signed "Philip Weiss, Chairman Labor Mediation Board" (R. 10).

The UAW-CIO "ignored the request" and "informed Mr. Weiss that we would not agree to the election" (R. 11). The strike commenced the next morning (R. 15).

On August 3, 1938 Circuit Judge Theodore J. Richter filed his opinion (R. 66), and on August 11, 1948, the decree for plaintiffs was entered (R. 71). The circuit judge held that (1) the limitations imposed by the Michigan statute upon the right to strike were unconstitutional invasions of basic rights protected by the due process clauses of the State and Federal Constitutions (R. 67-68); and (2) the collective bargaining rights and procedures of the Federal

Labor-Management Relations Act were impaired by the state act (R. 69). The court stated:

> "The exercise of collective bargaining rights is controlled by the federal law, and this control cannot be impaired or modified by the states. Under existing conditions it is impossible to dissociate the strike from the process of collective bargaining" (R. 69).

The court, therefore, permanently enjoined the prosecution of the plaintiffs for violating the election requirements of the state act (R. 70-71).

Defendants appealed. The Supreme Court of Michigan on June 29, 1949, reversed and dismissed the bill of complaint (R. 121-134). The Michigan Supreme Court found that "the calling and putting into effect of this strike was obviously in violation of the terms of the statute . . . and rendered plaintiffs subject to threatened criminal prosecution, providing the statute is valid" (R. 122). The court, thereupon, went ahead to consider all questions raised under the Federal Constitution and laws and decided them adversely to the plaintiffs. The court, relying heavily on *International Union, U. A. W. A., A. F. of L., Local 232* v. *Wisconsin Employment Relations Board*, 336 U. S. 245, held that it was not "an unreasonable exercise of the state's police power to forbid resort to a strike which is not approved by a majority of the employees involved . . ." (R. 127); and that there was no conflict between the provisions of the Michigan Act and the Labor-Management Relations Act, 1947, and no conflict with the Commerce Clause (R. 132). The court recognized that the strike involved plants in Indiana and California and that "some employees of the Chrysler Corporation who would be classed in the same bargaining unit are employed by the corporation in Indiana and some in

California," but it held that these facts could not affect the police power of Michigan "incident to a strike which is located in this state" (R. 133).

Specification of Errors to Be Urged

The court below erred:

(1) In holding that the provisions of the Michigan statute prohibiting the calling of a strike for higher wages in an industry affecting commerce unless and until a majority of all employees in the collective bargaining unit as designated by the State Mediation Board have so voted in a state-conducted election, did not invade the field which Congress has occupied by the Labor-Management Relations Act, 1947.

(2) In holding that these provisions of the Michigan statute did not conflict with the provisions of the Labor-Management Relations Act, 1947.

(3) In holding that these and other provisions of the Michigan statute did not constitute unlawful restraints upon basic personal rights in violation of the due process clause of the Fourteenth Amendment.

Summary of Argument

I

The Michigan statute invades the field of governmental regulation of strikes in industries affecting commerce, a field which Congress occupied in the Labor-Management Relations Act. Congress evidenced its intention to occupy this field by enacting detailed specific provisions regulating strikes in industries affecting commerce and by rejecting a strike vote requirement substantially identical to that contained in the Michigan statute under review.

A

From a myriad of proposals for dealing with strikes in industries affecting commerce, Congress selected for enactment the regulations it deemed appropriate for strikes in industries affecting commerce. Congress carefully listed as unfair labor practices certain types of strikes (Section 8(b)(4)), and made labor organizations liable for damages resulting from such proscribed strikes. Section 303. Congress provided that no strike to terminate or modify a collective agreement is permissible in the absence of a 60-day notice to the other party, 30-day notices to federal and state mediation agencies and bona fide negotiations in the intervening period. Section 8(d). Congress made special provision for strikes in "national emergencies" and provided for a secret ballot of employees to determine whether they wish to accept the final offer of the employer for settlement of the dispute. Sections 209-210. Even in the case of a threatened national emergency, however, Congress was unwilling to prohibit a strike which failed to receive the approval of a majority of the employees in a government poll. Once the vote was taken and regardless of its outcome, the employees were free to exercise their own judgment as to the desirability of putting the strike into effect.

This detailed action by Congress in the field of governmental regulation of strikes in industries affecting commerce constitutes a clear occupation of that field. *Plankinton Packing Co. v. Wisconsin Employment Relations Board*, No. 419, October Term, 1949, decided February 13, 1950; *LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767; *Hill v. Florida*, 325 U. S. 538.

B

The Hartley bill as it passed the House contained a binding strike vote provision substantially identical to that contained in the Michigan statute under review. The Senate version of the Taft-Hartley Act did not contain any such provision, although proposals for a binding strike vote had been presented to the Senate Committee. The Senate prevailed and the Taft-Hartley Act became law with only the strike provisions described in A above.

Congressional rejection of a binding strike vote provision can only be attributed to a belief that the provision would not accomplish the desired ends. There is nowhere in the legislative history the slightest intimation that the strike vote mechanism might be more effective on a state than on a national basis. On the contrary, a strike vote on a national basis could at least be taken among the employees of the entire bargaining unit instead, as in this case, among only a part of that bargaining unit. To say now that Congress left it to the states to pass the very provision which it expressly rejected would be to negate clear Congressional intent evidenced by compelling legislative history.

C

The *International Union* case did not, as the Michigan Supreme Court seemed to think, determine the question here presented. This Court in the *International Union* case considered the "unannounced stoppage of work to win unstated ends" not to be a strike. The Court, therefore, did not examine into the extent that the Labor-Management Relations Act, 1947 preempts the field in the case of strike action in industries affecting commerce or the express rejection by Congress of a strike vote requirement substantially identical to the one under review.

II

The Michigan statute clashes with the National Act at its very roots. Congress has clothed the chosen bargaining representative of the employees with the sole authority to bargain with the employer on their behalf. The State of Michigan cannot, by a strike vote requirement or otherwise, nullify this Congressionally-conferred authority of the chosen representative of the employees to act on their behalf and reject the employer's last offer. This conflict comes into even closer focus as the operation of the two statutes is examined.

A

The UAW-CIO represents in a single bargaining unit all the production and maintenance employees of the Chrysler Corporation employed not only in the State of Michigan but in the States of Indiana and California as well. The State of Michigan sought to apply a bargaining unit different from the bargaining unit which the duly qualified representative under the National Act was in fact representing in its negotiations with the Chrysler Corporation. This Court has held that the states cannot fix collective bargaining units in industries affecting commerce in situations where the conflict was far less real than in the case at bar. *LaCrosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767.

B

Under Section 8(d) of the National Act a party to a collective bargaining agreement desiring to terminate or modify that agreement must notify the other party 60 days in advance, must notify the federal and state conciliation agencies 30 days in advance and must continue in effect

without strike or lockout the terms of the existing agreement for 60 days or until the contract expires. The UAW-CIO complied with each of these requirements; it thus had the right under the National Act to take action to back up its collective bargaining demands. The additional delays and time-consuming procedures which the Michigan statute sought to impose upon the collective bargaining representative of the employees conflicts with the carefully devised procedures of the National Act.

C

Sections 7 and 13 of the National Act guarantee the right to strike peacefully and for lawful ends. The legislative history of both the Wagner Act and the Taft-Hartley Act evidence the Congressional intent to guarantee this right.

This Court has held that a state cannot place additional qualifications upon the right of employees to choose their collective bargaining representatives. *Hill v. Florida*, 325 U. S. 538. No more can a state place additional qualifications upon the right of employees to engage in strike action.

III

The Michigan statute violates the due process clause of the Fourteenth Amendment. The right of workers to strike peacefully and for lawful purposes is a fundamental one, like their rights to speak and to assemble. State action placing restraints upon the exercise of those rights must, if it is to be valid, be narrowly drawn to meet important public interests entitled to such protection.

The Michigan statute fails to meet these tests. The Michigan law applies to all strikes in all industries; it applies regardless of the purpose or merits of the strike or the damage to the interests of the employees by compelling them to work on terms dictated by the employer. The stat-

ute requires that the majority of the entire bargaining unit as determined by the State Board must vote approval before strike action is permitted. Thus, the rights of employees who desire to strike and who vote their approval can be defeated by those persons in the bargaining unit who are unable to cast their ballots because of illness, absence or otherwise, or who neglect or are unwilling to vote. Furthermore, the Michigan statute makes the quitting of work itself a crime just as it does the speech or assembly which instigate or cause employees to quit work in concert.

While this Court has never dealt with the precise question at hand, similar restraints upon the right to strike and its incidents have been held invalid by a statutory federal district court and by the highest courts of two states. *Stapleton* v. *Mitchell*, 60 F. Supp. 51 (D. Kans., 1945); *Alabama Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810 (1944); *American Federation* v. *Bain et al.*, 165 Ore. 183, 106 P. (2d) 544 (1940).

ARGUMENT

I

The Michigan Statute Invades a Field Which Congress Has Occupied

It is appellants' belief that in the National Act Congress occupied a field far greater than the governmental regulation of strikes in industries affecting commerce. The broad purposes of the National Act (Section 1(b)), its legislative history and its detailed operating provisions lead us to the conclusion that Congress was enacting a broad and exclusive labor code governing labor-management relations in industries affecting commerce. We believe that, except

where Congress specifically so provided,[5] this labor code leaves to the states only its "usual police powers" (*People of State of California* v. *Zook*, 336 U. S. 725, 734) such as the curbing of "mass picketing, threats, violence . . ." (*Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740) and of "coercive tactics" (*International Union, U.A.W.A., A. F. of L., Local 232* v. *Wisconsin Employment Relations Board*, 336 U. S. 245).

It is not necessary, however, for appellants to sustain the broad proposition enunciated in the previous paragraph. The Michigan statute is a general regulation of strikes in industries affecting commerce. If, as appellants contend and will demonstrate, Congress occupied the field of governmental regulation of strikes in industries affecting commerce, the Michigan statute cannot stand (*Napier* v. *Atlantic Coast Line R. Co.*, 272 U. S. 605), whether or not appellants are correct in their belief that the National Act is a labor code which excludes state action in the broader field of labor-management relations.

Congress evidenced its intention to occupy the field of governmental regulation of strikes in industries affecting

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[5] Where Congress intended that any phases of labor-management relations were to be left to state control it specifically so provided. Section 14(b) expressly reserves to the states the power to prohibit closed or union shop agreements. See *Algoma Plywood & Veneer Co.* v. *Wisconsin Employment Relations Board*, 336 U.S. 301. Congress also specifically left with the states the power to use their mediation and conciliation services to help the federal conciliation agencies in labor disputes affecting commerce. Sections 202(c), 203(b) and 8(d)(3). In like vein section 10(a) of the original National Labor Relations Act was amended to permit the National Board to cede jurisdiction in a limited area of industry which is "predominantly local in character", but only where there was no conflict between the applicable state and federal law. This Court adverted to section 10(a) in *People of State of California* v. *Zook*, 336 U.S. 725, 732, stating that "when state enforcement mechanisms so helpful to federal officials are to be excluded, Congress may say so, as in the Taft-Hartley Act, 29 U.S.C. (Supp.) § 160(a), 29 U.S.C.A. § 160(a)."

commerce in at least two ways: First, by the specific provisions it enacted; second, by the specific provisions which it expressly refrained from enacting. We will deal with these two points in order.

A

Congress enacted specific provisions dealing with strikes in industries affecting commerce:

In considering the Taft-Hartley Act, Congress had before it a wide range of proposals for the regulation of strikes in industries affecting commerce, including a proposal substantially identical to that contained in the Michigan statute under review. See Point B, *infra*, pp. 20 to 26. Proposals for every conceivable type of regulation of strike action were made to both the House and Senate Committees considering the Taft-Hartley Act.[6] The Senate Committee

[6] See, for example, testimony of the following persons before the Senate Committee: Theodore Iserman, Esq. (Hearings before the Committee on Labor and Public Welfare, U. S. Senate, 80th Cong., 1st Sess., on S. 55 and S. J. Res. 22, pp. 133, 134: Deprive those striking over issues that NLRB can handle of protection of NLRA, Clayton Act, and Norris-LaGuardia Act); Ludwig Teller, Esq. (id. at 248: Outlaw strikes for purpose of stifling production); B. E. Hutchinson, Vice-President, Chrysler Corp. (id. at 361: Outlaw industry-wide strikes); Louis Waldman, Esq. (id. at 412: Outlaw strikes during period of contract); Governor Harold Stassen (id. at 562: governmentally-supervised strike vote); Almon Roth, National Federation of American Shipping (id. at 634: Outlaw sympathy and recognition strikes); Charles Kuzzell, American Mining Congress (id. at 674: Strike vote—majority of employees affected must favor strike); Congressman Francis Case (id. at 730: 60-day cooling-off period); T. G. Graham, Vice-President, B. F. Goodrich Co. (id. at 887: 60-day cooling-off period followed by strike vote); and Ira Mosher, National Association of Manufacturers (id. at 950: strike vote with majority of eligible employees voting in favor of strike). See also the following testimony before the House Committee: H. L. Bills, Acme Steel Co. (Hearings before the Committee on Education and Labor, House of Representatives, 80th Cong., 1st Sess. on Bills to Amend and Repeal the National Labor Relations Act, p. 1095: Outlaw strikes for objectives contrary to NLRA); Edward O'Neal, American Farm Bureau Federation (id. at 1799: Cooling-off period; compulsory arbitration in

stated that "in dealing with the problem of the direct settlement of labor disputes the committee has considered a great variety of proposals ranging from compulsory arbitration, the establishment of fact-finding boards, creation of an over-all mediation tribunal, and the imposition of specific waiting periods." Senate Report No. 105 on S. 1126, p. 13. After consideration of all the varying proposals, the Senate Committee decided in favor of less drastic regulations, stating that "it is our conclusion that by modifying some of the practices under the Wagner Act which tend to destroy the balance of power in collective bargaining negotiations by restraining one party to a dispute without restraining the other, Congress would go a long way toward making collective bargaining the most effective method of solving the industrial relations difficulties." Senate Report No. 105 on S. 1126, p. 14. With this in view, the Senate Committee proposed and Congress finally enacted the following regulatory provisions insofar as strikes in industries affecting commerce are concerned:

(1) Congress carefully listed certain types of strikes and made them unfair labor practices. Under Section 8(b)(4) of the National Act it is an unfair labor practice for a union or its agents to engage in or encourage any strike for any one of the following objects:

> (a) To require an employer or self-employed person to join a union or an employer organization or to force an employer or any other person to cease dealing in the products of another employer. Section 8(b)(4)(A).

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disputes depriving public of food, fuel, etc.); Eric Johnston, Committee for Economic Development (id. at 2289: 10 days compulsory mediation followed by strike vote—majority of union members voting must favor strike); Congressman James Auchincloss (id. at 2910: compulsory arbitration); and Allen Rucker, Tool Owners Union (id. at 3201: strike vote—majority of employees affected must favor strike).

(b) To force or require any other employer to recognize or bargain with an uncertified union. Section 8(b)(4)(B).

(c) To force or require an employer to recognize or bargain with one labor organization if another union is the certified bargaining agent. Section 8(b)(4)(C).

(d) To force or require an employer to assign particular work to employees in one union or in one trade, craft or class, rather than to employees in another union or another trade, craft or class. Section 8(b)(4)(D).

In addition to making these actions unfair labor practices, Congress made labor organizations liable for damages resulting from strikes in the forbidden categories (Section 303) as well as providing for injunctive relief (Sections 10(j)-(l)).

(2) Congress not only listed the strikes which would be unlawful, but it also imposed procedural requirements conditioning the legality of strikes in industries affecting commerce. Under Section 8(d) no strike to terminate or modify a collective agreement is permissible in the absence of a sixty-day notice to the other party, thirty-day notices to federal and state mediation agencies, and bona fide negotiations in the intervening period. In addition to making the failure to follow these procedural steps unfair labor practices (Section 8(b)(3)), striking employees in such circumstances lose status as employees and the right to reinstatement. Section 8(d).

(3) Congress made special provision for strikes in "national emergencies". Sections 206-210. In the event such strikes are threatened, the National Labor Relations Board is directed to take a secret ballot of employees to determine whether they wish to accept the final offer of the employer for settlement of the dispute. Although the results

of such elections are certified to the Attorney General, no majority vote is required to make lawful a strike which results thereafter.

The national emergency provisions of the Taft-Hartley Act evidence the same Congressional antipathy to a binding strike vote that is demonstrated by the rejection of the House proposal for such a vote. See *infra*, pp. 20 to 26. Even in the case of a threatened national emergency, Congress was unwilling to prohibit a strike which failed to receive the approval of a majority of the employees in a government poll. All that Congress was willing to legislate even in dealing with national emergency strikes was a provision that there must be a vote; once the vote was taken and regardless of its outcome, the employees were free to exercise their own judgment as to the desirability of putting the strike into effect. It was the "force of public opinion", rather than any binding effect of the strike vote, upon which Congress was relying. See Senate Report No. 105 on S. 1126, p. 15.

It is difficult to interpret this detailed action by Congress in the field of governmental regulation of strikes in industries affecting commerce as anything except an occupation of that field. After considering a myriad of proposals for dealing with strikes in industries affecting commerce, Congress outlawed various types of strikes; it provided a carefully devised procedure for notices, mediation and bona fide negotiation prior to striking; it made special provision for national emergency strikes. These provisions of the National Act governing strike action in industries affecting commerce must be regarded under the decisions of this Court as a plain indication that the federal government has occupied the field and the state may not, therefore, impose additional restrictions upon strikes affecting commerce. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, No. 419, October Term,

1949, decided February 13, 1950; *LaCrosse Telephone Corp. v. Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co. v. New York State Labor Relations Board*, 330 U. S. 767; *Hill v. Florida*, 325 U. S. 538. Had Congress intended for the states to impose restrictions in this field in addition to its own detailed regulations, it is reasonable to assume that it would have specifically so stated just as it did in allowing the states to add restrictions upon "compulsory unionism" in addition to its own regulations. Section 14(b).[7]

It is respectfully submitted that no additional evidence of Congressional intent to occupy the field is required over and above the provisions which Congress itself enacted for the regulation and prevention of strikes in industries affecting commerce. But if any such additional evidence should be necessary, it is provided by the action of Congress in rejecting a specific proposal for the very type of limitation upon strikes that the State of Michigan seeks to impose.

B

Congress expressly rejected the strike vote provision which Michigan has enacted.

The original Hartley bill (H. R. 3020, 80th Cong., 1st Sess.), as reported by the House Committee, provided that a "strike may not be authorized or conducted unless in such secret ballot a majority of the employees in the bargaining unit concerned vote to reject the employer's last offer of settlement, and to strike". Section 2(11)(B)(vi)(h); see also Section 8(c)(8). In its report to the House accompanying the bill, the Committee called attention to the fact that the American workingman "has frequently against his will been called out on strikes which have resulted in wage losses representing years of his savings" (House Re-

[7] See also footnote 5, *supra*, p. 15.

port No. 245 on H. R. 3020, p. 4,) and stated its belief "that at least the more irresponsible strikes, those called without due consideration, those concerning small issues, and those that leaders call without consulting their constitutents, will be greatly reduced by requiring strike votes after each side has had an opportunity to state its position and to urge its fairness upon those called upon to do the striking" (House Report No. 245 on H. R. 3020, p. 22).

Six members of the House Labor Committee filed a minority report which took strong exception to the strike vote provisions. The minority stated:

> "Section 2(11)(B)(vi) states the requirements which must be met before a strike or lock-out is called and, in essence, requires the holding of a strike vote in which employees have an opportunity to accept or reject the employer's last offer. The effect of these provisions is to revive the unfortunate experience of the Smith-Connally Act and to interject the Federal Government still further into the bargaining process" (House Minority Report No. 245 on H. R. 3020, p. 70).

The strike vote provisions were also attacked on the floor of the House. Congressman Lane, for example, complained about the one-sided character of the bill, since "no provision is made for a ballot among stockholders to determine whether the union's last offer of settlement is satisfactory." 93 Cong. Rec. 3445 (1947). Congressman Klein supported Congressman Lane, stating that these provisions "constitute an intolerable regimentation of American labor." 93 Cong. Rec. 3448 (1947).

The Hartley bill (H.R. 3020), as it passed the House, contained the strike vote provision supported by the majority of the Committee and opposed by the minority. See Sections 2(11)(B)(vi)(h) and 8(e)(8). These provisions were substantially identical to the strike vote provisions of the Michigan statute under review here. A

government-conducted election was required prior to strike action. All the members of the bargaining unit, whether they belonged to the Union or not, were to have the right to vote in the election. No strike could be called unless a majority of the entire bargaining unit voted for that action.

The Senate, too, considered proposals for a binding strike vote. The question arose several times at the hearings before the Senate Committee on Labor and Public Welfare.[5] Perhaps the most dramatic incident of the lengthy Senate hearings preparatory to the Taft-Hartley Act was the testimony of Mr. Harold E. Stassen, former Governor of Minnesota, directed at this very question. Governor Stassen proposed the following provision to the Senate Committee:

> "If settlement has not been reached, the last offer of management arrived at to be presented for secret ballot vote as to acceptance or strike, the strike vote being at the end of negotiations rather than at the beginning. I consider a secret ballot to be the very core of improved procedure for peaceful settlement of industrial disputes" (Hearings before the Committee on Labor and Public Welfare, United States Senate, 80th Cong., 1st Sess., on S. 55 and S. J. Res. 22, p. 562).

Governor Stassen, under questioning by Senator Ball, conceded that the "final secret ballot" on the strike was the "key" to his entire proposal (Hearings, p. 577).

Neither Chairman Taft nor Senator Ball, who jointly piloted the Taft bill through the Senate, took kindly to Governor Stassen's proposal. Chairman Taft and Governor Stassen argued vigorously on this point:

[5] See, for example, testimony of Governor Stassen (Senate Hearings, p. 562), Charles Kuzzell (id. at 671), T. G. Graham (id. at 887), and Ira Mosher (id. at 950).

"The Chairman. Yes, I know, but I have no confidence. Frankly, I don't mind putting it to a labor vote, but I have no confidence that the men will take any different position from the leaders in 99 cases out of 100. I think it is all right to try it but as a solution of the labor problem I think it is just trivial. I think it is trivial as far as being a final solution of the problem. I think he ought to have the right to vote, but I don't think it is going to solve the strike problem. I think the men are more radical than their leaders in most cases.

"Mr. Stassen. I definitely disagree with you, Senator, and my experience for 8 years in Minnesota has been just to the contrary. . . .

"The Chairman. May I call your attention to the fact that the vote provision of the Smith-Connally Act did more to discredit the Smith-Connally Act than any other provision. It was a complete failure.

"Mr. Stassen. I agree with you.

"The Chairman. It may not have been done quite the right way, but every vote was for striking.

"Mr. Stassen. Why, Senator? Because the strike vote was the beginning of negotiations rather than the end.

"In other words, take the steel strike. You had the vote on the steel strike before there was a single offer on the matter of wages. . . .

"Now, then, at the end of the steel negotiations, what was the key question? It was 15 cents an hour and $4 a ton in steel, or strike. At that point, the workers in steel had no chance to pass upon that issue. The decision was made by a few men. They went out on strike, and they wound up with 18½ cents and $5.

"The Chairman. And, I have no doubt, if they had voted, they would have voted to strike as they did at first". (Hearings, pp. 574-575).

Senator Ball followed up Chairman Taft's questioning:

"Senator Ball. You put your whole faith in the final secret ballot on the strike?

"Mr. Stassen. No; I put my faith in all 10 proposals I advance.

"Senator Ball. Yes; but that is the key to it? You think that——

"Mr. Stassen. That, and increased information to them, of course, opening up the avenues of information from the employer to the employee.

"Senator Ball. Do you think, then, if Lewis and the coal operators could not get together, and he said, 'No contract, no work,' which is his way of saying it, there is much chance that the majority of the miners would not support Lewis?" (Hearings, p. 577-578).

The Senate Committee rejected the proposals for a strike vote. Instead, it limited the provision for a ballot to national emergency strikes, and even there to an advisory vote not binding on the bargaining representative (Senate Report No. 105 on S. 1126, 14-15).[9] S. 1126 as it passed the Senate and went to conference contained only the strike provisions now in the Taft-Hartley Act (see pp. 16 to 19, *supra*).

The House Conferees accepted the Senate's omission of the provision for the strike vote (House Conference Report No. 510 on H.R. 3020, p. 34-35). Indeed, the Taft-Hartley Act as it finally emerged from conference contained substantially the provisions relating to governmental regulation of strikes which had been adopted by the Senate Committee after considering all the various possibilities proposed during the hearings.

The legislative history of the National Act, therefore, shows that Congress gave detailed and careful considera-

[9] Apparently neither the Senate Committee nor the Senate itself took a formal vote on the House provision. It will be remembered in this connection that the Senate and the House considered entirely different bills and then sent them to conference together. There was never any formal consideration by either the Senate Committee or the Senate itself of H. R. 3020 as it passed the House.

tion to strike vote provisions of the very kind contained in the Michigan statute under review. Cf. *Carey* v. *Donohue*, 240 U. S. 430, 436-437; *United States* v. *Pfitsch*, 256 U. S. 547, 550-552, *United States* v. *Great Northern Ry. Co.*, 287 U. S. 144, 154-155; *Norwegian Nitrogen Prod. Co.* v. *United States*, 288 U. S. 294, 306. Congressional rejection of these provisions can only be attributed to a belief that the provisions would not accomplish the desired ends.[10] There is nowhere in the legislative history the slightest intimation that the strike vote mechanism might be more effective on a state than a national basis.[11] Indeed, it seems perfectly clear that the strike vote provision would have a far greater chance of success on a national than on a state basis. At least on a national basis the strike vote could be taken among the employees of the entire bargaining unit dealing with the employer. Where the state seeks to conduct a strike vote, it can poll only the employees within the state, even though, as in this case, the bargaining unit consists of employees both within and without the state. See pp. 28 to 31, *infra*. If Michigan can require a strike vote because of the Chrysler plants in Michigan, then Indiana and California can apply different provisions to the employees of the Chrysler plants within their borders. Thus, individual states will be in the position of affecting and even negating the labor relations policies of their sister states. This is clearly a case where uniformity of regulation is essential. *Pennsylvania R. Co.* v. *Public Service Commission*, 250 U. S. 566, 569.

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[10] Moreover, Senator Taft's remarks during the debates, set forth below, pp. 35-36, indicate that he had doubts as to legislative power to "modify" the "right to strike" except "in cases which do not involve the basic question of wages, prices and working conditions."

[11] In fact, the House Committee considered the possibility that under the Hartley Act provisions local agencies might be utilized by the federal authorities for conducting the elections if the latter so desired (House Report No. 245 on H. R. 3020, p. 22).

Congress, after full consideration of the arguments of both proponents and opponents, rejected the strike vote provisions which Michigan seeks to impose. Under certain circumstances, such as threatened national emergency strikes, Congress apparently believed that a strike vote might help to bring the force of public opinion to bear upon the parties. But that was all. To say now that Congress left it to the states to pass the very provision which it expressly rejected would be to negate clear Congressional intent evidenced by compelling legislative history. The only conclusion that can be drawn is that more generally drawn by the House Committee that "by the Labor Act Congress preempts the field that the Act covered insofar as commerce within the meaning of the Act is concerned" (House Report No. 245 on H.R. 3020, p. 44).

C

The International Union case does not support the decision below.

The *International Union* case did not, as the Michigan Supreme Court seemed to think, determine the question here presented. This Court in the *International Union* case considered the "unannounced stoppage of work to win unstated ends" not to be a strike,[12] but rather a form of illegal activity similar to the kind of concerted activities held un-

[12] "To call these stoppages a strike we would have to ignore petitioners' own conception of this activity. As we have shown, they adopted this technique precisely because it was believed to be 'better . . . than a strike.'" *International Union U.A.W.A., A.F. of L., Local 232 et. al.* v. *Wisconsin Employment Relations Board, et al.*, 336 U. S. 245, 264, ftn. 17.

In fact, the order of the Wisconsin Board under review expressly excepted from the action restrained the "leaving [of] the premises in an orderly manner for the purpose of going on strike." 336 U. S. at 250.

Furthermore, as this Court pointed out, "there was also evidence of considerable injury to property and intimidation of other employees by threats and no one questions the state's power to police coercion by those methods." 336 U. S. at 253.

protected in such cases as *National Labor Relations Board v. Fansteel Metallurgical Corporation*, 306 U. S. 240, and *Southern S. S. Co. v. National Labor Relations Board*, 316 U. S. 31. This Court affirmed the power of the State of Wisconsin over "coercive conduct" involving tactics in a work stoppage concerning which it found the National Act silent and the National Board powerless to deal "in any manner". Since the Court was not dealing with a strike in the *International Union* case, it did not examine into the extent that the Labor-Management Relations Act, 1947 preempts the field in the case of strike action in industries affecting commerce, or the express rejection by Congress of a strike vote requirement as related above.

II

The Michigan Statute Conflicts With the National Act

The Michigan statute clashes with the National Act at its very roots. The basic purpose of the Taft-Hartley Act, like that of its predecessor, the Wagner Act, is the encouragement of collective bargaining. Section 1(b); Section 1 of Title 1. This basic purpose finds expression in Section 7 of the Taft-Hartley Act, which, like the same section of the Wagner Act, accords to employees the right to organize and "bargain collectively through representatives of their own choosing." The National Act sets up procedures for determining the representatives of the employees' choosing and requires that the employer deal with these representatives and no others so long as they remain the representatives in good standing. *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332.

Congress has clothed the chosen representatives of the employees with the sole authority to bargain with the employer on their behalf. The employer cannot question their authority to bargain for the employees except by pursuing

the procedures set up in the National Act itself. Section 9. By requiring a strike vote on the employer's last offer, the State of Michigan is in effect assuming the power to nullify the Congressionally-conferred authority of the chosen representatives of the employees to act on behalf of the employees and reject the employer's last offer. The State of Michigan is thus interfering with collective bargaining through representatives chosen by the employees just as much as if it adopted additional qualifications for those representatives not prescribed by Congress. *Hill* v. *Florida*, 325 U. S. 538. As long as the collective bargaining representative—here the UAW-CIO—is authorized and acting under the National Act on behalf of the employees, any action by the State of Michigan, questioning the authority of the representative to act on their behalf conflicts with the National Act.

This conflict comes into even clearer focus as the operation of the two statutes is examined. At at least three vital points, the operation of the Michigan law clashes with the operation of the National Act. First, the bargaining unit under the State Act is different from the bargaining unit under the National Act. Second, the State Act requires delays in the collective bargaining process in conflict with the National Act. Third, the State Act conflicts with the right to strike protected by the National Act.

A.

The Bargaining Unit Under the Michigan Statute is Different from that Under the National Act.

The UAW-CIO represents in a single bargaining unit all the production and maintenance employees of the Chrysler Corporation employed in plants located not only in the State of Michigan but in the States of Indiana and California as well. The UAW-CIO has been certified by the National Labor Relations Board as the collective bargaining repre-

sentative of Chrysler employees in 14 plants in these 3 states. *Matter of Chrysler Corp.*, 42 N. L. R. B. 1145. See also R. 85. In carrying out its responsibility as the collective bargaining representative of these employees, the UAW-CIO entered into a collective bargaining contract with the company on behalf of all these employees (R. 85-86). Indeed, the UAW-CIO is legally obligated to represent the employees in all the different plants on a fair and equitable basis. Cf. *J. I. Case Co.* v. *National Labor Relations Board*, 321 U. S. 332; *Steele* v. *Louisville & Nashville R. R. Co.*, 323 U. S. 192; *Graham* v. *Brotherhood of Locomotive Fireman and Enginemen*, 338 U. S. 232.

In the instant case the State of Michigan sought to apply a bargaining unit different from the bargaining unit which the duly qualified representative under the National Act was in fact representing in its negotiations with the Chrysler Corporation. The strike vote upon which the Chairman of the State Mediation Board was insisting in his telegram to the officers of the UAW-CIO (R. 10) was a vote among the employees of the Chrysler Corporation in the State of Michigan. This limitation of the bargaining unit to employees in Michigan is not only expressly recognized by the Supreme Court of Michigan in its opinion (R. 133), but, indeed, has not been challenged by the State during this entire case. The State has never suggested that it had either the authority or the administrative machinery for taking the votes of Chrysler employees in Indiana and California.

Thus, the UAW-CIO was at the bargaining table with the Chrysler Corporation on behalf of a bargaining unit established and recognized by the National Act. The State of Michigan sought to interject its own procedures into this situation and insist that the Congressionally-authorized representative of the employees yield to a vote by one part

of that bargaining unit to determine what action the representative could take to effectuate its bargaining demands. The strike vote upon which the State Mediation Board was insisting pursuant to the Michigan statute would not have determined whether a majority of the employees involved and a majority in the actual bargaining unit established and recognized by the National Act in fact favored the acceptance of the last offer of the employer. All that the strike vote would have determined was that a certain number of persons in a part of that unit favored, and a certain number of persons did not favor, the action which the representative under the National Act proposed to take.

This Court has held that the states cannot fix collective bargaining units in industries affecting commerce in situations where the conflict was far less real than in the case at bar. *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *LaCrosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18. The *LaCrosse* case is particularly significant. There the Telephone Company had recognized and was bargaining with the International Brotherhood of Electrical Workers as the representative of its plant and traffic department employees. A rival union, the Telephone Guild, filed a petition with the Wisconsin Employment Relations Board asking the State Board, in pursuance of the Wisconsin statute, to certify the collective bargaining representative of these employees. After hearing and election, the Wisconsin Board certified the Telephone Guild as the representative of the employees in the plant and traffic departments. The Wisconsin Supreme Court upheld the Board's action on the ground that the State Board could exercise jurisdiction until the National Board undertook to determine the appropriate bargaining unit. This Court rejected the view taken by the Supreme Court of Wisconsin and invalidated the state de-

termination of the bargaining unit. This Court's action is particularly noteworthy since in the *LaCrosse* case the National Board had not determined a bargaining unit for the company and, for all that appeared, the bargaining unit designated by the State Board was the same as that which would have been designated by the National Board had it been called upon to act. In the case at bar, the National Board had not only determined a bargaining unit, but had set one different from the bargaining unit which the State Board sought to apply. In the *LaCrosse* case, this Court referred to "the very real potentials of conflict." 336 U. S. at 26. In the case at bar, the conflict has passed from the potential to the actual.

The Michigan Supreme Court took cognizance of this argument but rejected it summarily with the statement that "this circumsfance cannot be held to be a restriction upon the exercise in Michigan of the state's inherent police power incident to a strike which is located in this state" (R. 133). The court's statement overlooks the truism that even the state's inherent police power cannot be exercised in conflict with valid Congressional action. See, e. g., *Cloverleaf Butter Co.* v. *Patterson*, 315 U. S. 148, 155-156. Nor is this in fact a case of "restricting" the "state's inherent police power". The State of Michigan is free to regulate labor relations which do not affect interstate commerce and it is free to combat violence and coercive tactics (*Allen-Bradley Local No. 1111* v. *Wisconsin Employment Relations Board*, 315 U. S. 740; *International Union, U.A.W.A., A. F. of L., Local 232* v. *Wisconsin Employment Relations Board*, 336 U. S. 245). But, as this Court pointed out in the *Allen-Bradley* case, "a distinctly different question" arises when the action of the State Board forfeits "collective bargaining rights" or otherwise conflicts with the National Act. 315 U. S. at 751.

B

The delays imposed by the Michigan statute conflict with the National Act.

Under Section 8(d) of the National Act, a party to a collective bargaining agreement desiring to terminate or modify that agreement must notify the other party 60 days prior to the time it is proposed to make such termination or modification, must notify the federal and state conciliation agencies 30 days prior to such time, and must continue in effect, without strike or lock-out, the terms of the existing agreement for 60 days or until the contract expires. The UAW-CIO complied with each of these requirements; once it did so, it had the right under the National Act to take action to back up its collective bargaining demands.

The Michigan statute would have imposed additional delays upon the collective bargaining representative of the employees. Section 9(1) of the State Act provides that "in the event the parties thereto are unable to settle any dispute, the employees or their representative . . . shall serve notice upon the Board of such dispute . . . not less than 10 days" before a strike. The State Mediation Board is given the duty to seek a settlement of the dispute "by mediation between the parties." Section 9(2). In the event either party notifies the Board that further efforts to settle the dispute by mediation would be without avail, the Board is to take a strike vote. Section 9a. The strike vote is to be held within 10 days of the receipt of the notice, if practicable, and, if not, within 20 days. Section 9a.

Since the state procedure outlined in the previous paragraph goes into effect only when the parties "are unable to settle any dispute", it is clear that the state procedures cannot run concurrently with the time limitations in Sec-

tion 8(d) of the National Act. Thus, Michigan requires time-consuming procedures to begin at the very moment when the National Act leaves the representative of the employees free to back up collective bargaining demands with strike action. Regardless of the fact that the overwhelming majority of the employees may favor a strike during this additional period, the Michigan statute forbids the representative of the employees from taking the action it deems necessary and proper. While this Court has never passed upon this exact question, its decisions in the labor-management relations field clearly indicate that the state may not take conflicting action of the type enacted into law by the Michigan statute under review. *Plankinton Packing Co.* v. *Wisconsin Employment Relations Board*, No. 419, October Term, 1949, decided February 13, 1950; *La Crosse Telephone Corp.* v. *Wisconsin Employment Relations Board*, 336 U. S. 18; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *Hill* v. *Florida*, 325 U. S. 538. And the Court of Appeals for the Sixth Circuit squarely held that state "delaying" action of a far lesser character violated the National Act even as it existed prior to the more detailed provisions of the Taft-Hartley Act. *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. (2d) 465, 471 (C. C. A. 6th, 1947), *cert. den.* 332 U. S. 762.

C

The Michigan statute conflicts with the right to strike guaranteed by the National Act.

Section 7 of the Taft-Hartley Act, just as did its predecessor, the Wagner Act, accords to employees "the right to self-organization . . . to bargain collectively through representatives of their own choosing, and to engage in

other concerted activities for the purpose of collective bargaining or other mutual aid or protection . . ." Both of these rights—"to bargain collectively" (see *infra*, pp. 39-40) and "to engage in other concerted activities for the purpose of . . . mutual aid or protection"—include the right to strike. The National Labor Relations Board has so interpreted these provisions since they were first enacted into law in the Wagner Act in 1935 [13] and the legislative history of the Wagner Act leaves little doubt that this was the intention of Congress.[14] This Court, too, has recognized the existence of the right to strike under the Wagner Act. See *National Labor Relations Board* v. *Mackay Radio and Telegraph Co.*, 304 U. S. 333, 345-347; *National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240, 256.

The provisions of Section 13 of the National Act reenforce the provisions of Section 7. Section 13 provides:

> "Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right."

The final clause of Section 13—"or to affect the limitations or qualifications on that right"—was added to the similar provision of the original Wagner Act by the Taft-Hartley Act. That this clause was not intended as a limitation upon the previous right to strike recognized under

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[13] *United Aircraft Mfg. Co.*, 1 NLRB 236, 252; *American Manufacturing Co.*, 5 NLRB 443, enforced, 106 F. 2d 61 (CCA 2d), affirmed, 309 U.S. 629; *Republic Steel Corporation*, 62 NLRB 1008; *Columbia Pictures Corp.*, 64 NLRB 490, 514-515; *National Labor Relations Board* v. *Kalamazoo Stationery Co.*, 160 F. 2d 465 (CCA 6th), enforcing, 66 NLRB 930, 931, certiorari denied, 332 U.S. 762.

[14] Legislative History of the National Labor Relations Act of 1935, Vol. I (Government Printing Office, 1950), pp. 153, 246, 1312, 1344, 1346, 1371.

the Wagner Act is evidenced by the report of the Senate Committee which states:

> "Section 13 has been amended in two respects: (1) By a clause which makes clear that the Wagner Act has diminished the right to strike only to the extent specifically provided by the new amendments to the act; (2) by the addition of the words 'to affect the limitations or qualifications on that right.'
>
> "It should be noted that the Board has construed the present act as denying any remedy to employees striking for illegal objectives (See *American News Co.*, 55 N. L. R. B. 1302, and *Thompson Products*, 72 N. L. R. B. 150). The Supreme Court has interpreted the statute as not conferring protection upon employees who strike in breach of contract (*N. L. R. B.* v. *Sands Manufacturing Company*, 306 U. S. 332); or in breach of some other Federal law (*Southern Steamship Company* v. *N. L. R. B.*, 316 U. S. 31); or who engage in illegal acts while on strike (*Fansteel Metallurgical Corp.* v. *N. L. R. B.*, 306 U. S. 240).
>
> "This bill is not intended to change in any respect existing law as construed in these administrative and judicial decisions." Senate Report No. 105 on S. 1126, p. 28.

That Sections 7 and 13 of the Labor-Management Relations Act do guarantee to employees in industries affecting commerce the right to strike to obtain legitimate economic objectives is also evidenced by the very specific statements of Senator Taft, the author of the National Act, upon the floor of the Senate:

> "Basically, I believe that the committee feels, almost unanimously, that the solution of our labor problems must rest on a free economy and on free collective bargaining. The bill is certainly based upon that proposition. That means that *we recognize freedom to strike when the question involved is the improve-*

ment of wages, hours, and working conditions, when a contract has expired and neither side is bound by a contract. We recognize that right in spite of the inconvenience, and in some cases perhaps danger, to the people of the United States which may result from the exercise of such right. In the long run, I do not believe that that right will be abused. In the past few disputes finally reached the point where there was a direct threat to and defiance of the rights of the people of the United States.

"*We have considered the question whether the right to strike can be modified. I think it can be modified in cases which do not involve the basic question of wages, prices, and working conditions* . . .

". . . So far as the bill is concerned, we have proceeded on the theory that *there is a right to strike* and that labor peace must be based on free collective bargaining. We have done nothing to outlaw strikes for basic wages, hours, and working conditions after proper opportunity for mediation." 93 Cong. Rec. 3835 (1947) (emphasis supplied).

The deprivation of the right to strike by the State of Michigan, except insofar as a majority of the employees of a particular bargaining unit cast their votes in favor of a strike, conflicts with the National Act. In this posture of the case, it would appear to be governed by *Hill* v. *Florida*, 325 U. S. 538. There, this Court struck down, as in conflict with the National Labor Relations Act, the provisions of a Florida statute preventing any person from acting as a representative of employees who had not been a citizen of the United States for more than ten years, who had been convicted of a felony, or who was not of good moral character. This Court held that Florida could not place these additional qualifications upon the right of the employees to choose their representatives. No more can

Michigan place an additional qualification upon the right of the employees to engage in strike action.[15]

It will undoubtedly be conceded by appellees that a state cannot prohibit entirely the exercise by employees subject to the National Act of the right to strike. No more can the state condition that right by a provision forbidding its exercise in the absence of a vote or in case of an adverse vote. Indeed, in the present situation the Michigan statute went further than just requiring a majority of those voting to approve the strike. The statute requires that, as a condition of the exercise of the right to strike, a majority of the entire bargaining unit, including those absent and sick and indifferent, must affirmatively vote to approve the strike. This patent effort to restrict the federally protected right to strike cannot stand.

D

The International Union case is inapplicable.

The *International Union* case did not present a case of conflict with the National Act. This Court took great pains to point out that the action to which the state was directing its order in that case was conduct not subject to regulation under the National Act. 336 U. S. at 253, 257. There could, therefore, be no conflict between the National and State Acts.

Furthermore, as we have pointed out above (pp. 26-27 *supra*), this Court was equally careful to indicate that no strike was involved in the *International Union* case, but

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[15] It might be noted, too, that Mr. Justice Frankfurter, dissenting in the *Hill* case, relied heavily upon the fact that "all activities or aspects of labor organizations outside of their right to be free from employer coercion were left wholly unregulated by that [Wagner] Act" (325 U.S. at 559), a condition which the Taft-Hartley Act has radically altered.

only coercive conduct and tactics of a kind which fall within the inherent police powers of the state.

III

The Michigan Statute Violates the Due Process Clause of the Fourteenth Amendment

Because of the points heretofore made in this brief, it is appellants' position that there is no need to consider the constitutionality of the Michigan statute as it applies to them independently of its impact upon the National Act. It is respectfully submitted, however, that the Michigan law imposes unconstitutional restraints upon the appellants' right to strike and upon their rights by speech and assembly to "instigate" or "call" or "cause" a concerted peaceful refusal to work to secure lawful demands. An examination of the strike provisions of Sections 9, 9a and 9b and the conduct made criminal by Section 22, in the light of their effect upon the rights of appellants to take concerted action to secure higher wages and to quit work in concert when satisfactory wages are not offered, will show that the State of Michigan has exceeded permissible constitutional limits.

It is not here contended that the right to strike is an absolute one or that the states cannot consistently with the Fourteenth Amendment restrict in any way the objects for which strike action may be taken, or the methods which employees may use in carrying on their strike.

It is appellants' contention that the right of workers to strike peacefully and for lawful purposes is a fundamental one, like their rights to speak and to assemble; that state action placing restraints upon the exercise of those rights must, if it is to be valid, be narrowly drawn to meet important public interests entitled to such protection. The Michigan statute fails to meet this test.

A

It is by now a truism that in modern industrial society the individual employee's ability to bargain with a large industrial employer to secure satisfactory working conditions is dependent upon his freedom to combine with his fellow employees; and the employee's bargaining strength flows from his ability, acting in concert with other employees, to quit work in order to secure terms which he considers necessary to his welfare. See, *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209; *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S. S. Clerks*, 281 U. S. 548, 570-571.

In a recent study "Strikes and Democratic Government" (1947) the Labor Committee of the Twentieth Century Fund has pointed out how essential the right to strike is to any real collective bargaining:

> "In genuine collective bargaining . . . the possibility of a strike or lockout is . . . an ever-present and controlling factor in the realistic processes of collective bargaining. Those processes lose all color of reality if the workers have not the right to reject management's offer and quit, or if management has not the right to refuse the workers' terms and close the plant. It is the overhanging pressure of this right to strike or to lockout that keeps the parties at the bargaining table and fixes the boundaries of stubbornness in the bargaining conferences . . . Unless the negotiating parties are faced with this possibility of a strike or a lockout, and are forced to examine and accept the consequences of their own decision, they are free from the responsibility that makes genuine collective bargaining possible and produces through it creative results. Thus, for the ordinary labor dispute, the possibility of a strike or lockout is, in the last analysis, the most potent instrument of persuasion" (pp. 13-14).

It is impossible to read the opinions of this and other courts dealing with the rights of workers to organize, to bargain collectively and to implement their union activity by free speech and peaceful assembly without concluding that the right to strike—"the unquestioned right to quit work" (*National Labor Relations Board* v. *Fansteel Metallurgical Corporation*, 306 U. S. 240, 256)—is a fundamental liberty in our democratic society and under our Constitution. See *Iron Moulders' Union* v. *Allis Chalmers Co.*, 166 Fed. 45, 50 (C. C. A. 7, 1908), *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 534; 267 U. S. 552, 569; *Texas & N. O. R. Co.* v. *Brotherhood of Ry. & S.S. Clerks*, 281 U. S. 548, 570-571; *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33; *In re Porterfield*, 28 Cal. (2d) 91, 114-118, 168 P. (2d) 706, 720-722 (1946); *Bayonne Textile Corp.* v. *American Federation of Silk Workers*, 116 N. J. Eq. 146, 152-153; 172 Atl. 551, 554 (1934). Absent that right, free collective bargaining concerning the terms and conditions of employment disappears and the right of workers to organize becomes a hollow shell. The employees must then work on terms dictated by the employer and there is no power to secure redress from "a harsh overlordship or unwholesome conditions of work." *Pollock* v. *Williams*, 322 U. S. 4, 18.

When basic personal rights have been curtailed by legislation, this Court has prescribed strict standards which must be met before the curtailment will be sustained. The presumption of validity applicable to other types of regulatory legislation is not effective; there must be clear affirmative support for the restraints; and, if the regulation is to stand, the statute "must be narrowly drawn" to deal with the precise evil which the legislature seeks to curb. See *United States* v. *Carolene Products Co.*, 304 U. S. 144,

152-153; *De Jonge* v. *Oregon*, 299 U. S. 353, 364-365; *Lovell* v. *Griffin*, 303 U. S. 444, 451; *Schneider* v. *State of New Jersey*, 308 U. S. 147, 161; *Thornhill* v. *Alabama*, 310 U. S. 86, 105; *Cantwell* v. *Connecticut*, 310 U. S. 296, 311; *Thomas* v. *Collins*, 323 U. S. 516, 530. The provisions of the Michigan statute here involved fail to meet these standards.

B

The prohibition by Michigan of strikes and action inducing strikes unless the prerequisites of the statute can be and are met is arbitrary and sweeping in scope:

(1) All strikes are embraced. The statute is not limited to strikes in "sensitive" industries or to situations in which public health or safety may be imperiled or to those which may otherwise adversely affect the public in peculiar and important respects.

(2) The restrictions apply to all strikes regardless of their purpose. Disputes are defined in Section 2(b) of the Michigan statute to include any controversy between employer and employee concerning terms of employment. In the instant case appellants' strike was called to gain wage increases, a classic and lawful reason for refusal to continue work.

(3) The restrictions apply regardless of the merits of the controversy and regardless of how great the provocation.

(4) The restrictions apply without requiring any finding by a state agency that any public emergency will be created by the strike in question or that the injury to the public interest will exceed the damage done to the interest of the workers

by compelling them to work on terms dictated by the employer.[16]

(5) The prior restraints which the statute imposes are not only upon all kinds of peaceful strikes for all kinds of lawful purposes, but also upon the speech and assembly which induce such strikes. For the statute makes criminal the "instigation" of a strike or "calling" or "causing" a strike without first meeting the conditions which are imposed. These restraints cover not only the conduct of union officials but also that of the workers assembled in union meetings to consider the terms of their employment contract being negotiated. Strikes are "instigated" and "called" and "caused" by spoken and written speech, by discussion, counsel and persuasion in and out of assemblies of the employees.

C

The scope of the statute is not only arbitrary in its sweep, but the regulations are unreasonable and discriminatory in the light of any discernible evil which the legislature was entitled to suppress.

1. The statute requires that the majority of the entire bargaining unit as determined by the State Board must vote approval before strike action is permitted. The rights of the employees who desire to strike and who vote their approval can be defeated by those persons in the bargaining unit who are unable to cast their ballots because of illness, absence or otherwise, or who neglect or are unwilling to vote. Thousands may be compelled to work for inadequate wages

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[16] This Court said in *Thornhill* v. *Alabama*, 310 U.S. 88, 103:

"It is recognized now that satisfactory hours and wages and working conditions in industry and a bargaining position which makes these possible have an importance which is not less than the interests of those in the business or industry directly concerned."

or under unhealthy conditions because of the indifference of a few who fail to express their views. The votes of non-union members may determine what action the union members may take. The votes of non union members may be based upon considerations unrelated to the merits of the wage controversy and may even be based upon the desire to embarrass the union. And in the instant case, because the unit which bargains with the Chrysler Corporation covers many employees in other states, a negative vote by a majority of the workers in Michigan or even their indifference can effectively frustrate the desires of a clear majority of all the workers affected.

2. The employees are called upon to defray half the cost of the election. Their right to quit work is thus subjected to a direct financial charge which, as in the case of the Chrysler Corporation with more than 65,000 employees, may be substantial and thereby burden and discourage the exercise of the right to strike. Cf. *Murdock* v. *Pennsylvania*, 319 U. S. 105.

3. Under Section 9(g) of the Michigan statute, if requested by the employer or by "the collective bargaining unit", the Board is required to print on the ballot or to attach thereto "a copy or statement of the most recent offer submitted by the employer in the course of collective bargaining negotiations . . ." No provision is made for an independent evaluation of the truth of the statement or the good faith of the employer in proffering it. Nor is provision made for submission at the time of vote of a statement by the Union of its "most recent offer."

4. No requirement is imposed by the State upon corporate employers that approval be secured by a majority vote of their stockholders before the employer can reject the Union's last offer. There is only the one-sided require-

ment that the employer's last offer must be submitted to a vote of the employees.

5. The effectiveness of the strike in the bargaining process is blunted further by the delays which the strike vote procedure imposes. See *supra*, pp. 32-33. There is imposed upon the employees desiring to strike, even in cases where they do obtain a majority vote in the state poll, a delay for a period of twenty to thirty days or longer,[17] during which they are compelled to work upon terms set by the employer. The timing of strike action has, of course, an important bearing upon the effectiveness of the strike or the threat of a strike.

6. The Michigan statute makes the quitting of work itself a crime, just as it does the speech and assembly which instigate or cause employees to quit work in concert. The statute does not merely deprive appellants of their status as employees or of other affirmative protections of strikers. The statute makes it a criminal offense[18] punishable by fine and imprisonment for any one person or any group of persons to "instigate" or "call" or "cause" a strike during the period of mediation or "while an election is pending." Section 22. Section 9b provides that "it shall be the duty of both employees and employer to avoid a cessation of employment or a change

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[17] Experience with representation elections shows that questions of challenged and improperly marked ballots frequently arise which require time and investigation to resolve. This situation would further delay the date when the strike could be put into effect.

Moreover, by reason of Act 21, P. A. 1947, Mich. Stats. Ann. § 27.545(1) permitting appeals to the circuit courts from any "order, decision or opinion" of the Mediation Board, means are available to prevent completion of the statutory steps prerequisite to an authorized strike for additional periods of time.

[18] The statute apparently also authorizes an injunction against the strike. Section 22a authorizes the Board or any other party to "pursue any proper . . . equitable remedy or relief" against "any act or conduct in violation of any of the provisions of this act."

in the normal operations of the business during the entire period in which the respective steps required by Section 9 of this Act are being taken or until a strike is authorized by an election held as approved in section 9a." Pursuant to these provisions, the Chairman of the State Mediation Board on May 11, 1948 notified the Union that "any *work stoppage* at Chrysler Corporation prior to the taking of a strike vote conducted by the Labor Mediation Board is in violation of Act 176 of the Public Acts of 1939, as amended" (R. 10). (Italics supplied.)

A strike is "caused" by the employees quitting work in concert. The act of each of the employees participating is thus made a criminal offense by the State of Michigan, and each employee must therefore work against his will and upon terms which are set by the employer.[19] The court below attempts to avoid recognizing that compulsory employment is thus imposed by the statute (Cf. *Pollock* v. *Williams*, 322 U. S. 4, 17-18; *Arthur* v. *Oakes*, 63 Fed. 310, 319 (C. C. A. 7th, 1894)) by referring to the provision in section 13(a) of the Michigan statute which states:

> "Nothing in this Act shall be construed to require an employee to continue rendering labor or service without his consent or to make illegal the quitting of his employment."

The Supreme Court of Michigan refers to this provision at one point in its opinion (R. 128) as though, like the Wisconsin statute construed in *Hotel and Restaurant Employees', etc.* v. *Wisconsin Employment Relations Board*, 236 Wis. 329 (affirmed 315 U. S. 437), the Michigan Act

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[19] No means are afforded by the State to fix fair and reasonable terms of employment for those who are forbidden to quit work. State mediation will by that time have been tried and have failed. The underlying disagreement between the parties remains unresolved, and the bargaining representative must necessarily withdraw its demand since it cannot back it up.

did not prevent "a minority of a collective-bargaining unit from withdrawing from employment either singly or in concert." 236 Wis. at 345. It is impossible so to construe section 13(a) of the Michigan Act without sapping all meaning from the nub of the statute and the Michigan Supreme Court has not so construed it. The basis of the decision below is that the statute does and the state may make criminal the action of all members of the union who "cause" a strike by quitting work in concert as well as the speech and assembly of any of them which "instigate" or "cause" or "call" such action into effect.

D

When basic liberties are thus restricted, there must be an affirmative showing of a strong public interest seriously threatened which will be served by the restrictions. The test of "reasonableness" which due process requires in such situations is not lightly met. *Thomas* v. *Collins*, 323 U. S. 516. The general interest of the state in the "peace, health and comfort" of the people was held insufficient to sustain a state system of compulsory arbitration of disputes as to terms of the employment contract even when applied to a limited class of industries. *Wolff Packing Co.* v. *Court of Industrial Relations*, 262 U. S. 522, 534; 267 U. S. 552. Under the Kansas statute there held invalid under the Fourteenth Amendment, a dissatisfied laborer was forbidden to "agree with his fellows to quit or combine with others to induce them to quit." 262 U. S. at 534. And the "social value" in "enforcing contracts and collection of debts", though "great", has been held insufficient to sustain suspension of the right to be free from compulsory employment. *Pollock* v. *Williams*, 322 U. S. 4, 18.

The only "finding" which the legislature made was that "strikes and lockouts . . . . , regardless of where the

merits of the controversy lie, are forces productive ultimately of economic waste.". The alleged justification "inferred" by the court below was the "desire to prevent stoppage of work in a plant as to all of the employees, which stoppage was caused by a small number of employees in a key position going on strike" (R. 126). But there was no showing that strike action is taken by unions in Michigan without adequate provision for first securing the approval of the strike by their membership through democratic processes. In the instant case the Constitution of the appellant Union[20] provides that each Local involved must by secret balloting approve strike action by a two-thirds vote of its members (R. 11). The duly elected International Executive Board of the Union must then approve the recommendations of the Locals before the strike action can be put into effect (R. 12). The strike recommendations in the instant case were made by the Chrysler Locals and approved by the Executive Board under these provisions of the Union's Constitution (R. 16).

The State could not reasonably find that the restraints which the statute imposed upon strike action were necessary to protect the process of collective bargaining by the majority. The statute is not drawn so that it merely prohibits strike action taken in the face of an existing collective agreement negotiated by the bargaining representative of the majority of the employees; nor is the statute limited to situations in which strike action is taken contrary to the decision of the organization of employees which is authorized to bargain with the employer as the majority representative. Cf. Section 8(b)(4)(C) of the National Act. A different question would be presented if a statute so limited were here involved. In the instant case the statute was held applicable to a strike decided upon by the

[20] The United Automobile Workers (UAW-CIO), the appellant, is the largest Union in Michigan (R. 41).

UAW-CIO which was the only recognized bargaining representative of the employees. The strike was approved by the membership through their own democratic union machinery. The strike was called upon the termination of an existing contract and was directed at securing acceptable wages in the new agreement which the UAW-CIO was negotiating and which it alone could negotiate. The statute, nonetheless, made criminal such strike action. The statute thus compels the bargaining representative to accept terms of employment which it has rejected in the course of bargaining.

The statutory provisions here involved cannot, therefore, be sustained as a proper concomitant of legislation and industrial practice under which unions as majority representatives deal for all employees in the bargaining unit. Cf. *J. I. Case Co. v. National Labor Relations Board*, 321 U. S. 332.

E

No decision of this Court deals with the precise question at hand. However, similar restraints upon the right to strike and its incidents have been held invalid by a statutory federal district court and by the highest courts of two states.

In *Stapleton v. Mitchell*, 60 F. Supp. 51 (D. Kans. 1945), the court considered and found unconstitutional the provision of a Kansas statute which made it unlawful for any person "to participate in any strike, walk-out or cessation of work or continuation thereof without the same being authorized by a majority vote of the employees to be governed thereby, provided that this shall not prohibit any person from terminating his employment on his own volition."

The court emphasized that:

> "The right to peaceably strike or to participate in one, to work or refuse to work, and to choose the terms and conditions under which one will work, like the right to make a speech, are fundamental human liberties which the State may not condition or abridge in the absence of grave and immediate danger to the community." 60 F. Supp. at 61.

The Alabama Supreme Court has struck down as repugnant to the Fourteenth Amendment provisions of a state statute which prohibited strikes except when authorized by a vote of the majority of the regular employees working in the plant or business. *Alabama Federation of Labor* v. *McAdory*, 246 Ala. 1, 18 So. (2d) 810 (1944). It is true that the Alabama statute required the majority vote of all the employees in the plant or business and thus might in some cases cover employees outside the bargaining unit affected. But the court's decision that the statutory restraint violated the Fourteenth Amendment rests upon broader grounds. The court emphasized that,

> "each individual has a right to strike for a legally justifiable purpose, and such a right, of course, rests upon a minority as well as upon a majority." [21]

In *American Federation* v. *Bain et al.*, 165 Ore. 183, 106 P. (2d) 544 (1940), a statute which prohibited picketing by a minority of employees as an incident to a strike was likewise held invalid under the Fourteenth Amendment.

The heavy reliance of the Michigan Supreme Court in the instant case upon the *International Union* case was misplaced. What was there upheld against attack on grounds of due process was a restraint upon an "unan-

[21] The court also adverted to the fact that the statute, like the Michigan law, applied "to a perfectly lawful strike, for a lawful purpose conducted in a lawful manner." 246 Ala. at 21.

nounced stoppage of work to win unstated ends", not a restraint upon a strike peacefully conducted to achieve proper wage demands. The opinion of this Court pointed out that in that case "nothing in the statute or the order makes it a crime to abandon work individually, compare *Pollock* v. *Williams*, 322 U. S. 4, or collectively." 336 U. S. at 251.[22]

The restraints upon the right to strike or to induce strikes or upon picketing which attend strikes which this Court has upheld have been those which did not defeat the fundamental right of employees to quit work in concert as part of the process of orderly collective bargaining to secure acceptable terms of employment. The state statutes upheld by this Court have been those which, for example, imposed restraints upon striking to attain demands unrelated to the purposes for which collective bargaining traditionally exists, *Dorchy* v. *Kansas*, 272 U. S. 306; or restraints against collective action to achieve results which violate a state policy in another area incorporated in a valid and independent statute, *Giboney et al.* v. *Empire Storage & Ice Co.*, 336 U. S. 490; or restraints which were imposed upon violence attending the strike or the picketing, *Allen-Brad-*

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[22] The court below likewise relied upon the case of *Hotel and Restaurant Employees International Alliance, etc.* v. *Wisconsin Employment Relations Board*, 236 Wis. 329, 294 N. W. 632, and upon this Court's affirmance of that decision in 315 U. S. 437. The Michigan Supreme Court noted that the Wisconsin statute there involved required a majority vote calling a strike before picketing became lawful. But this Court carefully pointed out that the sole question before it was the validity of an order under the Wisconsin statute construed by the Wisconsin Supreme Court as being directed only against violence and not against picketing which was peaceful. And the Wisconsin Court expressly found that there was "nothing in the Act which prevents a minority of a collective bargaining unit from withdrawing from employment either singly or in concert." 236 Wisc. at 345.

ley Local No. 1111 v. *Wisconsin Employment Relations Board*, 315 U. S. 740.

The court below could point to no decision of this Court which has upheld a state statute making strikes or speech or other conduct which induces or attends them criminal offenses where the restraints are imposed upon action undertaken for lawful ends and pursued peaceably. Whatever may be the exact contours of the protection which the Federal Constitution throws around the right of free men to organize, to bargain collectively and to strike for acceptable terms of employment, they embrace the conduct of the appellants which the State of Michigan has made a crime.[23]

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[23] This Court has never decided whether the protection of the Thirteenth Amendment applies only against "individual bondage" or whether it is violated as well by a state statute which makes it a crime for employees to quit their employment collectively and peacefully to secure acceptable conditions of employment. See concurring opinion of Rutledge J. in *American Federation of Labor et al.* v. *American Sash & Door Co.*, 335 U. S. 538, 559. This Court has, however, said that the "undoubted aim of the Thirteenth Amendment as implemented by the Anti-peonage Act was not merely to end slavery but to maintain a system of completely free and voluntary labor throughout the United States", *Pollock* v. *Williams*, 322 U. S. 4, 17, and that the amendment as implemented "means that no state can make the quitting of work any component of a crime . . ." (322 U. S. at 18).

In answering the contention of the Union in the *International Union* case that the Wisconsin statute as there applied imposed "a form of compulsory service or involuntary servitude" in violation of the Thirteenth Amendment, Mr. Justice Jackson pointed out that "nothing in the statute or the order makes it a crime to abandon work individually, compare *Pollock* v. *Williams*, 322 U. S. 4, *or collectively*." 336 U. S. at 251 (italics supplied). The Michigan statute's prohibition against a collective work stoppage presents a different question.

Since the questions of "involuntary servitude" under the Thirteenth Amendment and unreasonableness under the Fourteenth Amendment would appear to be predicated on similar considerations, no elaborate argument on this point seems required.

Conclusion

It is respectfully submitted that the Michigan statute (a) invades a field which Congress has occupied, (b) conflicts with the National Act, and (c) violates the due process clause of the Fourteenth Amendment. The judgment of the court below should be reversed.

Respectfully submitted,

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February 23, 1950.

APPENDIX "A"

MICHIGAN STATUTE

Act No. 176 of the Public Acts of 1939, as amended by Act No. 318 of the Public Acts of 1947.

Sec. 2. When used in this act, unless the language or context indicates otherwise: . . .

(b). The terms "dispute" and "labor dispute" shall include but are not restricted to any controversy between employers and employes or their representatives as above defined, concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining or changing terms or conditions of employment. . . .

Sec. 9. No strike or lockout shall take place or be put into effect until and unless each of the steps have been taken and the requirements complied with as provided in this act.

1. In the event the parties thereto are unable to settle any dispute, the employees or their representative, in the case of impending strike, or the employer or his agent, in the case of an impending lockout, shall serve notice upon the board of such dispute together with a statement of the issues involved. Said notice may be served personally on any member of the board and a copy thereof personally served upon the other party, or sent by registered mail to the board at a regularly established office thereof and to the employer at his regular address not less than 10 days before the strike or lockout is to become effective, or in case of an industry affected with a public interest or a public utility or hospital, said notice shall be so served not less than 30 days before the strike or lockout is to become effective.

2. Upon receipt of such notice it shall be the duty of the board to exercise the powers herein granted to effect a settlement of such dispute by mediation between the parties. Prior to the calling of an election as provided hereinafter, it shall be the duty of each of the parties to such dispute to actively and in good faith participate in the mediation

thereof. At least 1 member of the board, to be designated by the chairman, shall actively participate in the negotiations to mediate any dispute in an industry affected with a public interest including any public utility or hospital.

Sec. 9a. In the event that it becomes apparent to the board that there is no reasonable probability of settlement of such dispute by mediation and that further efforts to that end would be without avail, there shall be held in the case of any impending strike, an election upon such issue which election shall be conducted and supervised by the board. In the event either party to said dispute notifies the board in writing, a copy of which shall at the same time be served on the other party, that in the opinion of such party, further efforts to settle such dispute by mediation would be without avail, it shall be the duty of the board to cause an election to be held within 10 days of the receipt of such notice unless it is not practical to hold such election within said period, in which event said election shall be held within 20 days of receipt of such notice: PROVIDED, That such board need not call more than 1 election involving the issues set forth in the notice served upon the board. The expense of such election shall be defrayed by the parties to such dispute either equally or upon such other basis as may be agreed upon. Every employee in the bargaining unit shall be entitled to vote in such election and in order to authorize a strike under the provisions of this act, a majority of all employees in such bargaining unit must vote in favor of such action. Said election shall be by secret ballot, and shall be held on the premises where those voting are employed. The board shall have the power and authority to promulgate such rules and regulations as shall be necessary to effectively conduct any election and the wilful violation of any such rules and regulations shall be a violation of the provisions of this act.

Sec. 9b. It shall be the duty of both employees and employer to avoid a cessation of employment or a change in the normal operation of the business during the entire period in which the respective steps required by section 9 of this act are being taken or until a strike is authorized by an election held as provided in section 9a.

Sec. 9e. The board, after consultation with the parties, shall determine such a bargaining unit as will best secure to the employees their right of collective bargaining. The unit shall be either the employees of 1 employer employed in 1 plant or business enterprise within this state, not holding executive or supervisory positions, or a craft unit, or a plant unit, or a subdivision of any of the foregoing units: PROVIDED, HOWEVER, That if the group of employees involved in the dispute has been recognized by the employer or identified by certification, contract or past practice, as a unit for collective bargaining, the board shall adopt such unit.

Sec. 22. Any person who either individually or as 1 of a group of persons instigates a strike, or who shall call or cause a strike to be placed in effect, or who shall cause or call a lockout, without first having served notice as required in section 9 of this act, or while mediation is pending as provided in section 9c of this act; or while an election is pending under said section 9, or while arbitration proceedings are pending under sections 9d and 13 of this act, or any person who shall engage in unauthorized picketing as prohibited by this act, or who shall knowingly and wilfully violate any of the rules or regulations promulgated under section 9a and section 9c, or any of the provisions of section 9f, shall upon conviction thereof be punished by a fine of not more than $1,000.00 or by imprisonment in the county jail for not more than 6 months, or by both such fine and imprisonment.

Sec. 22a. The board, or any person, labor ~~organization~~, firm or corporation may pursue any proper legal or equitable remedy or relief in any court of competent jurisdiction for any act or conduct in violation of any of the provisions of this act.

APPENDIX "B"

Labor-Management Relations Act, 1947 (61 Stat. 136, 29 U. S. C., Supp. II, 141 *et seq.*).

Sec. 1(b). Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act, in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

Sec. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3).

Sec. 8(b). It shall be an unfair labor practice for a labor organization or its agents—

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9 (a);

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; (B) forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9; (C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9; (D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work: *Provided*, That nothing contained in this subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act . . .

Sec. 8. (d). For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the em-

ployees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement, or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: *Provided*, That where there is in effect a collective-bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification—

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lock-out, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of such contract, whichever occurs later;

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) shall become inapplicable upon an intervening certification of the Board, under which the labor organization or individual,

which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9 (a), and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within the sixty-day period specified in this subsection shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purpose of sections 8, 9, and 10 of this Act, as amended, but such loss of status for such employee shall terminate if and when he is reemployed by such employer.

Sec. 13. Nothing in this Act, except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike, or to affect the limitations or qualifications on that right.

Sec. 14. (b) Nothing in this Act shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

Sec. 209. (b) Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of the sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish

to accept the final offer of settlement made by their employer as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

SEC. 210. Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.